

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 715,

Petitioner,

vs.

STANFORD HOSPITAL AND CLINICS
AND LUCILE PACKARD CHILDREN'S
HOSPITAL,

Respondents.

Case No: 5:08-CV-00215 JF

[PROPOSED] ORDER GRANTING
STANFORD HOSPITAL AND CLINICS
AND LUCILE PACKARD CHILDREN'S
HOSPITAL'S MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION OF CLAIMS OR
DEFENSES

Date: August 29, 2008
Time: 9:00 A.M.
Dept: Ctrm. 3, 5th Floor

Judge: Hon. Jeremy Fogel

///

///

///

///

///

///

///

[PROPOSED] ORDER GRANTING STANFORD AND LPCH'S
MOTION FOR SUMMARY JUDGMENT/ADJUDICATION
CASE NO: 5:08-CV-00215 JF

The motion of Respondents, Stanford Hospital And Clinics and Lucile Packard Children's Hospital (the "Hospitals"), for summary judgment or, in the alternative adjudication of claims or defenses (the "Motion") came on regularly for hearing on August 29, 2008 with Eileen R. Ridley of Foley & Lardner LLP appearing as counsel for the Hospitals and Bruce Harland of Weinberg Roger & Rosenfeld appearing as counsel for Petitioner Service Employees International Union, Local 715 ("Local 715"). After full consideration of the supporting and opposing papers, the evidence submitted by the parties, the oral argument of counsel and the papers and files regarding this matter, and good cause appearing, the Court finds that there is no triable issue of any material fact and that the Hospitals are entitled to judgment as a matter of law under Rule 56 of the Federal Rules Of Civil Procedure for the reasons stated below.

I. LOCAL 715'S SECTION 301 ACTION IS UNTIMELY

The undisputed facts show that Local 715's action under "Section 301" of the Labor Management Relations Act ("LMRA") (29 U.S.C. § 185) is untimely. Section 301 actions are subject to a six (6) month limitations period. *United Steelworkers Of America v. Retirement Income Plan for Hourly Rated Employees Of Asarco, Inc.*, 512 F.3d 555, 561 (9th Cir. 2006). The limitations period "begins to run from the time one party makes it clear that it will not submit the matter to arbitration." *Id.*

The Court finds that the following facts are material and undisputed:

- The grievance at issue (the "Dues Grievance") was filed on May 22, 2007 and alleged that the Hospitals' refusal to remit dues to "Local 715" violated a collective bargaining agreement between the parties. [Declaration of Laurie J. Quintel ("Quintel Decl.") ¶ 68 & Exh. UU.]
- On May 30, 2007, the Hospitals' Director of Employee/Labor Relations, Laurie J. Quintel, faxed a letter to Chief Steward Jesus Andrade, informing him that the Hospitals were refusing the process the Dues Grievance. [Quintel Decl. ¶ 69 & Exh. VV.]
- The instant petition to compel was filed on January 11, 2008. [Dkt. No. 1.]

1 Because the Hospitals gave unequivocal notice that they would not arbitrate the Dues
 2 Grievance by their letter sent by fax and mail on May 30, 2007, and Local 715's Section 301
 3 action was not filed until over seven (7) months later, the action is untimely. Therefore the Court
 4 ORDERS that judgment SHALL BE ENTERED against Local 715 and in favor of the Hospital
 5 on that basis and Local 715's Petition SHALL BE AND IS HEREBY DISMISSED WITH
 6 PREJUDICE.

7 **II. LOCAL 715 HAS CEASED TO EXIST**

8 In the alternative, the Hospitals are not required to arbitrate the Dues Grievance because
 9 Local 715 has ceased to exist.

10 The Court finds that the following facts are material and undisputed:

- 11 • In 1998, the National Labor Relations Board ("NLRB" or the "Board") issued an order
 12 (the "Certification") certifying Local 715 as the exclusive collective bargaining
 13 representative of a unit of Hospital employees (the "Bargaining Unit") as set forth in the
 14 Certification. [Declaration of Laurence R. Arnold In Support of Motions ("Arnold Decl.")
 15 Exh. A.]
- 16 • Thereafter, the Hospitals and Local 715 engaged in collective bargaining resulting in a
 17 series of collective bargaining agreements. The current collective bargaining agreement
 18 (the "CBA") became effective on January 20, 2006, and is scheduled to expire on
 19 November 4, 2008. [Arnold Decl. Exh. B.]
- 20 • Article 1 of The CBA contains a "Recognition Clause" which states that, pursuant to the
 21 Board's Certification, the Hospitals recognized Local 715 "as the sole and exclusive
 22 representative for the purpose of collective bargaining" with respect to Bargaining Unit
 23 employees. [Arnold Decl. Exh. B.]
- 24 • Article 26 of the CBA contains a grievance and arbitration procedure through which
 25 alleged violations of the CBA may be challenged. However, only Local 715 may appeal
 26 a grievance to arbitration. [Arnold Decl. Exh. B.]
- 27
- 28

- 1 • Between February 18 and February 20, 2006, Local 715 entered into a “Servicing
2 Agreement” with Service Employees International Union, United Healthcare Workers –
3 West (“UHW”). [Arnold Decl. ¶ 36 & Exh. CC; Declaration of Scott P. Inciardi In
4 Support of Motions (“Inciardi Decl.”) Exh. EE.]
- 5 • The Servicing Agreement provided that UHW would provide certain “professional
6 services” to Local 715 at no cost, including “Representation in the grievance procedure
7 and at arbitration hearings,” “Representation at labor-management meetings,” and
8 “Assistance to members appearing before the National Labor Relations Board on behalf
9 of the Local 715 Chapter at the Stanford Facility.” [Arnold Decl. Exh. CC.]
- 10 • The Servicing Agreement further provided that, Local 715 and UHW would take such
11 steps as were necessary to enforce the agreement, including initiating proceedings before
12 the NLRB, in the event that the Servicing Agreement was rejected by the Hospitals.”
13 [Arnold Decl. Exh. CC.]
- 14 • The Servicing Agreement was to be effective as of March 1, 2006. [Arnold Decl. Exh.
15 CC.]
- 16 • On February 28, 2006, Greg Pullman, then Local 715’s Staff Director, informed Laurie
17 Quintel, the Hospitals’ Director of Employee and Labor Relations, that she should work
18 with an employee of UHW named Ella Hereth in connection with the settlement of
19 grievances and unfair labor practice charges. [Quintel Decl. ¶ 9.]
- 20 • Around the same time, another UHW employee named Rachel Deutsch told Ms. Quintel
21 that UHW would be taking over representation for the Hospitals. [Quintel Decl. ¶ 10.]
- 22 • Ms. Quintel sought clarification from Mr. Pullman, whereupon Mr. Pullman told Ms.
23 Quintel that “Local 715 represents the workers covered by our agreement” but that
24 “Local 715 has asked SEIU UHW to service this unit in many ways on a day-to-day
25
26
27
28

1 basis.” [Quintel Decl. ¶ 11-12 & Exh. B.]

- 2 • Between March and May, 2006, the functions that had formerly been carried out by Local
3 715 personnel were carried out exclusively by UHW employees. UHW employees filed
4 grievances on UHW stationery, some of which referred to Bargaining Unit members as
5 “members” of UHW. [Quintel Decl. ¶ 15 & Exh. D.] Ms. Hereth sent a letter to Ms.
6 Quintel instructing to “direct all SEIU correspondence” to UHW employees at UHW’s
7 San Francisco office. [Quintel Decl. ¶ 14 & Exh. C.] On May 22, 2006, Jocelyn Olick, a
8 UHW employee and purported servicing agent under the Servicing Agreement, stated in
9 an e-mail that “I and Ella Hereth do not work for SEIU 715. SEIU-UHW is doing the
10 representation work here at Stanford Hospital.” [Quintel Decl. ¶ 20 & Exh. H.] On the
11 same day, Mr. Pullman stated in an e-mail that “Jocelyn Olick, Rachel Deutch and Ella
12 Hereth out of the SEIU UHW San Francisco office are handling all representation matters
13 for SEIU Local 715.” [Quintel Decl. ¶ 20 & Exh. H.] Ms. Olick also purported to have
14 authority to accept changes to the CBA. [Quintel Decl. ¶ 21 & Exh. I.]
- 15 • On or around March 28, 2006, W. Daniel Boone of the law firm Weinberg Roger &
16 Rosenfeld, which historically represented Local 715, wrote a letter to Laurence R.
17 Arnold, an attorney who represents the Hospitals, which referred to “United Healthcare
18 Workers – West (formerly SEIU, Local 715).” [Arnold Decl. ¶ 26 & Exh. S.]
- 19 • In early April, 2006, UHW employee Phyllis Willett told Ms. Quintel that when the
20 Hospitals remitted union dues, they needed to provide the social security numbers of the
21 relevant employees to help UHW identify them. [Quintel Decl. ¶ 16.]
- 22 • Around April 17, 2006, Ms. Quintel received a letter from William A. Sokol of the
23 Weinberg Firm in which he stated “I am writing on behalf of SEIU United Healthcare
24 Workers West” and requested that the Hospitals provide information pertaining to
25 Bargaining Unit employees, and the dues deducted from their paychecks. [Quintel Decl.
26
27
28

¶ 17 & Exh. E.]

- In May and June, 2006, Hospitals informed Local 715 that they did not consent to any transfer of bargaining rights from Local 715 to UHW, and that the Hospitals would not deal with employees of UHW. [Quintel Decl. ¶ 19 & Exh. G; Arnold Decl. ¶ 32 & Exh. Z.]
- In June, 2006, Hospitals requested information from Local 715 regarding the organization's status and the role of UHW. [Arnold Decl. ¶ 32 & Exh. Z.]
- On June 9, 2006 the Service Employees International Union ("SEIU" or the "International") issued a document titled "Hearing Officers' Joint Report And Recommendations" (the "Joint Report"). The Joint Report outlined a plan to reorganize various SEIU Locals (the "SEIU Reorganization Plan"). The Joint Report noted, "Local 715 is the certified representative of employees at Stanford and Lucille (sic) Packard Hospitals" but that "UHW is actually servicing employees in these facilities . . . pursuant to servicing agreements." [Inciardi Decl. Exh. T p. 16.] The Joint Report concluded that, in order to maximize local union strength, the jurisdiction of various local unions should be changed. With respect to government employee unions, the report recommended the creation of new local unions, that would absorb "a substantial portion" of the membership of existing local unions, including Local 715. [Inciardi Decl. Exh. T p. 40.] The Joint Report also recommended that, "the affiliation of private healthcare units represented by Locals 727, 715, and 2028 should be changed to UHW as soon as feasible." [Inciardi Decl. Exh. T p. 65.]
- On June 11, 2006, Andrew L. Stern, International President of SEIU, issued a memorandum to "Affected SEIU Local Unions in California" announcing that SEIU had decided to adopt the recommendations outlined in the Joint Report. The memorandum confirmed that "Private Sector Hospital units currently represented by Locals 535, 707,

715, 2028, and 4988 will merge into UHW.” [Quintel Decl. ¶ 23 & Exh. K at p. 4.]

- Hospitals received copies of the Servicing Agreement in mid August and reviewed it. [Quintel Decl. ¶ 24-25 & Exh. L; Arnold Decl. ¶ 36-38 & Exh. CC-EE.] The Hospitals concluded, based upon the evidence that Local 715 had abdicated its representative duties and assigned them to UHW, that the Servicing Agreement was invalid and rejected it.
- Local 715 was informed of the Hospitals’ rejection of the Servicing Agreement on or around August 29, 2006, and was further informed that the Hospitals would not deal with employees of UHW acting pursuant to the Servicing Agreement. [Arnold Decl. ¶ 38 & Exh. EE.]
- In September, 2006, Bargaining Unit employees were asked to ratify the reorganization plan adopted by SEIU by means of a state-wide vote. The balloting material distributed to Bargaining Unit employees expressly stated that “Hospital workers at . . . Stanford/Lucille Packard Children’s Hospital . . . will change their affiliation to United Healthcare Workers – West.” [Quintel Decl. ¶ 26-27 & Exh. M-N.]
- On January 2, 2007, International President Stern issued an “Order Of Reorganization” to various SEIU locals, including Local 715. [Inciardi Decl. Exh. U.] President Stern ordered that all workers represented by Local 715, with certain exceptions, be “reorganized into SEIU Local 521.” President Stern further ordered that “all . . . Stanford/Lucille (sic) Packard Hospital workers be, and are hereby, reorganized into SEIU Local UHW.” [Inciardi Decl. Exh. U.] Such “reorganization” was to take place as soon as practicable.
- On January 31, 2007, Chief Shop Steward Robert W. Rutledge, stated in an e-mail that, “SEIU 715 no longer exists and a service agreement between the former 715 and UHW has been in place since March first of 2006.” [Quintel Decl. ¶ 28 & Exh. O.] Copies of the e-mail were sent to Ms. Olick and UHW employee Kim Tavaglione, neither of whom

1 objected to Mr. Rutledge's statement.

- 2 • At a meeting with Ms. Quintel on or around February 2, 2007, Mr. Rutledge repeated his
3 assertion that Local 715 no longer existed. He also stated that Local 715 no longer
4 represented employees at the Hospitals, and that they were now represented by UHW.
5 [Quintel Decl. ¶ 29.]
6
- 7 • In late January, Local 715 prominently posted a statement on its website, located at
8 <http://www.SEIU715.org>, that "We are in the process of transitioning to our new local
9 521. This web site will be taken down on Feb. 28. On March 1, our new Local's web
10 site www.seiu521.org will have your chapter pages and other information." [Quintel
11 Decl. ¶ 30 & Exh. P.]
12
- 13 • Beginning on or around March 1, visitors to Local 715's website could no longer access
14 the former site, but were automatically redirected to the website of Service Employees
15 International Union, Local 521 ("Local 521"), located at <http://www.SEIU521.org>. Local
16 521's website contained a prominent statement that five local unions, including Local
17 715 "have come together . . . by forming one larger, more powerful local." [Quintel
18 Decl. ¶ 32 & Exh. R.] Another page referenced benefits available to "former SEIU Local
19 715 members." [Quintel Decl. ¶ 32 & Exh. R.]
20
- 21 • On or around March 5, 2007, Local 715's website contained the following statement:
22 "Five locals (415, 535, 700, 715, and 817) have come together to cover the North Central
23 region by forming one larger, more powerful local. On January 2, 2007, our new local
24 received its charter. On March 1, 2007, the resources of all five locals were transferred to
25 Local 521." [Quintel Decl. ¶ 40 & Exh. X.]
26
- 27 • As of March 2, 2007, UHW's website, located at <http://SEIU-UHW.org>, contained an
28 assertion that UHW represented the Hospitals' employees. [Quintel Decl. ¶ 34 & Exh.
S.] UHW has continued to claim to represent the Hospitals' employees on its website.

[Inciardi Decl. ¶ 24 & 29-30 & Exh. C21-C22.]

- The dues deduction authorization forms, by which the individual bargaining unit members authorized deduction and remittance of union dues, authorized remittance of dues specifically to Local 715, and to no other organization. [Quintel Decl. ¶ 35 & Exh. T.]
- In fact, although it was not known to the Hospitals at the time, the actual recipient of the dues being remitted to “Local 715” was Local 521. A document posted on the Local 521 Website titled “Dues Receipts of the year of 2007” showed that, in September, 2007, Local 521 received a payment of dues totaling \$21,949 from an account designated “USW Hospitals” (“USW” being a commonly used acronym for “United Stanford Workers,” the name given to the chapter of Local 715 that had been assigned to the SHC/LPCH Bargaining Unit). [Arnold Decl. ¶ 57 & Exh. WW.] This was the exact amount (rounded to the dollar) of the Hospitals’ last dues remittance to “Local 715” for February, 2007, which was \$21,949.35. [Quintel Decl. ¶ 38 & Exh. V.]
- On March 2, 2007, the Hospitals informed “Local 715” that, after the remittance of the dues for February, 2007, the Hospitals would no longer remit dues to “Local 715” absent clarification of its status and the identity of the organization that would be receiving the dues. [Quintel Decl. ¶ 36 & Exh. U.] The requested information was not provided, and after March 1, 2007, the Hospitals ceased remitting dues. [Quintel Decl. ¶ 37.] The Hospitals continued to deduct dues from Bargaining Unit employees’ checks, but held the dues in a separate bank account established for that purpose, a procedure that continues to date. [Quintel Decl. ¶ 37.]
- On June 8, 2007, President Stern issued an “Order Of Emergency Trusteeship.” [Inciardi Decl. Exh. Z.] That order stated that, because of the Hospitals’ “position” that Local 715 had ceased to exist, and the transfer of the bulk of Local 715’s former members and

resources to Local 521, SEIU was placing “Local 715” under trusteeship, removing its officers, and appointing Bruce W. (“Rusty”) Smith as trustee. The order confirmed that the SEIU’s reorganization plan remained in place and that the remaining members of “Local 715” would be “united with other SEIU healthcare members in SEIU United Healthcare Workers – West.” [Inciardi Decl. Exh. Z.]

- Mr. Smith sent a letter to Ms. Quintel on June 14, 2007 informing her of the trusteeship, that the Servicing Agreement would “remain in full force and effect,” and that UHW employees would continue to “service” the Hospitals. [Quintel Decl. ¶ 48 & Exh. FF.]
- Around June 18, 2007, Mr. Arnold learned that Barbara J. Chisholm of the law firm Altshuler Berzon LLP (the “Altshuler Firm”) was now representing “Local 715.” Mr. Arnold confirmed this in a conversation with Ms. Chisholm followed by a confirming letter. [Arnold Decl. ¶ 40 & Exh. FF.]
- To date, the Hospitals have not received any notification that the Altshuler Firm no longer represents “Local 715.” [Quintel Decl. ¶ 57; Arnold Decl. ¶ 40.]
- Since the announcement of the Altshuler Firm’s representation of “Local 715,” the Hospitals continued to receive correspondence from Weinberg Firm attorneys purporting to act on “Local 715’s” behalf in grievance and arbitration matters. [Arnold Decl. ¶ 49, 55 & 65 & Exh. UU & EEE.] Weinberg Firm attorneys also appeared in each arbitration hearing that was held after the appointment of the Altshuler Firm as counsel. [Arnold Decl. ¶ 46 & 49 & Exh. LL.]
- The Hospitals were aware that the Weinberg Firm has historically acted as counsel to UHW and it had previously sent correspondence to the Hospitals representing UHW pursuant to the Servicing Agreement.[Quintel Decl. ¶ 17 & Exh. E.] The Hospitals became concerned that when the Weinberg Firm acted on behalf of “Local 715,” it was actually retained by UHW and acting under authority of the rejected Servicing

1 Agreement. However, when the Hospitals requested information from “Local 715” on
 2 this issue “Local 715” and its purported attorneys either failed to respond or openly
 3 refused to respond. [Arnold Decl. ¶ 49-53 & Exh. NN-RR.] The Hospitals concluded
 4 that the Weinberg Firm was, in fact, representing UHW, and that its appearances on
 5 “Local 715’s” behalf were made under authority of the rejected Servicing Agreement.
 6 Therefore, the Hospitals refused to participate in arbitration proceedings with Weinberg
 7 attorneys absent assurances that the appearance was made directly on behalf of “Local
 8 715” and not pursuant to the Servicing Agreement. [Arnold Decl. ¶ 53 & Exh. RR.]
 9 Neither the Weinberg Firm nor the Altshuler Firm provided the Hospitals with the
 10 requested assurance.

11 The undisputed facts set forth above demonstrate that on or around March 1, 2007, Local
 12 715 was dissolved and that it no longer exists. It is well-established that, where the NLRB
 13 certifies a union as the exclusive bargaining representative of an employer’s workers pursuant to
 14 the NLRA, the employer is not only obligated to bargain with that union, but is prohibited from
 15 bargaining with any other union. *Medo Photo Supply Corporation v. National Labor Relations*
 16 *Board*, 321 U.S. 678, 673-674 (1944); *Nevada Security Innovations, Ltd.*, 341 NLRB 953, 955
 17 (2004). Where the certified union has ceased to exist, the employer’s bargaining obligation is at
 18 an end. *Brooks v. National Labor Relations Board*, 348 U.S. 96, 98 (1954); *Pioneer Inn*
 19 *Associates v. National Labor Relations Board*, 578 F.2d 835, 839 (9th Cir. 1978).

20 Likewise, where an employer and the certified union negotiate a collective bargaining
 21 agreement providing for arbitration of disputes, and the union subsequently ceases to exist, the
 22 employer no longer has any obligation to arbitrate because only the union has standing to compel
 23 arbitration. *Moruzzi v. Dynamics Corporation Of America*, 443 F.Supp. 332, 336-337 (S.D.N.Y.
 24 1977); *Lorber Industries Of California v. Los Angeles Printworks Corporation*, 803 F.2d 523, 525
 25 (9th Cir. 1986) (The obligation to arbitrate “may not be invoked by one who is not a party to the
 26 agreement”). Where the certified union has ceased to exist, its former officials or representatives
 27 do not have standing to compel arbitration under its name. *Moruzzi, supra*, 443 F.Supp. at 337.
 28

Because Local 715 has ceased to exist, it lacks standing to compel arbitration and the Hospitals are not obligated to arbitrate with it. Therefore the Court ORDERS THAT judgment SHALL BE ENTERED against Local 715 and in favor of the Hospitals and that LOCAL 715's Petition SHALL BE AND IS HEREBY DISMISSED WITH PREJUDICE.

III. THE HOSPITALS ARE NOT OBLIGATED TO ARBITRATE WITH UHW OR ITS REPRESENTATIVES

Whether or not Local 715 continues to exist, the Hospitals are not obligated to arbitrate with UHW or UHW's representatives acting pursuant to the Servicing Agreement because the Servicing Agreement is invalid.

The Court finds that the following facts are material and undisputed:

- In 1998, the National Labor Relations Board ("NLRB" or the "Board") issued an order (the "Certification") certifying Local 715 as the exclusive collective bargaining representative of a unit of Hospital employees (the "Bargaining Unit") as set forth in the Certification. [Arnold Decl. Exh. A.]
- Thereafter, the Hospitals and Local 715 engaged in collective bargaining resulting in a series of collective bargaining agreements. The current collective bargaining agreement (the "CBA") became effective on January 20, 2006, and is scheduled to expire on November 4, 2008. [Arnold Decl. Exh. B.]
- Article 1 of The CBA contains a "Recognition Clause" which states that, pursuant to the Board's Certification, the Hospitals recognized Local 715 "as the sole and exclusive representative for the purpose of collective bargaining" with respect to Bargaining Unit employees. [Arnold Decl. Exh. B.]
- Article 26 of the CBA contains a grievance and arbitration procedure through which alleged violations of the CBA may be challenged. However, only Local 715 may appeal a grievance to arbitration. [Arnold Decl. Exh. B.]

- 1 • Between February 18 and February 20, 2006, Local 715 entered into a “Servicing
2 Agreement” with Service Employees International Union, United Healthcare Workers –
3 West (“UHW”). [Arnold Decl. ¶ 36 & Exh. CC; Inciardi Decl. Exh. EE.]
- 4 • The Servicing Agreement provided that UHW would provide certain “professional
5 services” to Local 715 at no cost, including “Representation in the grievance procedure
6 and at arbitration hearings,” “Representation at labor-management meetings,” and
7 “Assistance to members appearing before the National Labor Relations Board on behalf
8 of the Local 715 Chapter at the Stanford Facility.” [Arnold Decl. Exh. CC.]
- 9 • The Servicing Agreement further provided that, Local 715 and UHW would take such
10 steps as were necessary to enforce the agreement, including initiating proceedings before
11 the NLRB, in the event that the Servicing Agreement was rejected by the Hospitals.”
12 [Arnold Decl. Exh. CC.]
- 13 • The Servicing Agreement was to be effective as of March 1, 2006. [Arnold Decl. Exh.
14 CC.]
- 15 • On February 28, 2006, Greg Pullman, then Local 715’s Staff Director, informed Laurie
16 Quintel, the Hospitals’ Director of Employee and Labor Relations, that she should work
17 with an employee of UHW named Ella Hereth in connection with the settlement of
18 grievances and unfair labor practice charges. [Quintel Decl. ¶ 9.]
- 19 • Around the same time, another UHW employee named Rachel Deutsch told Ms. Quintel
20 that UHW would be taking over representation for the Hospitals. [Quintel Decl. ¶ 10.]
- 21 • Ms. Quintel sought clarification from Mr. Pullman, whereupon Mr. Pullman told Ms.
22 Quintel that “Local 715 represents the workers covered by our agreement” but that
23 “Local 715 has asked SEIU UHW to service this unit in many ways on a day-to-day
24 basis.” [Quintel Decl. ¶ 11-12 & Exh. B.]
- 25
26
27
28

- 1 • Between March and May, 2006, the functions that had formerly been carried out by Local
2 715 personnel were carried out exclusively by UHW employees. UHW employees filed
3 grievances on UHW stationery, some of which referred to Bargaining Unit members as
4 “members” of UHW. [Quintel Decl. ¶ 15 & Exh. D.] Ms. Hereth sent a letter to Ms.
5 Quintel instructing to “direct all SEIU correspondence” to UHW employees at UHW’s
6 San Francisco office. [Quintel Decl. ¶ 14 & Exh. C.] On May 22, 2006, Jocelyn Olick, a
7 UHW employee and purported servicing agent under the Servicing Agreement, stated in
8 an e-mail that “I and Ella Hereth do not work for SEIU 715. SEIU-UHW is doing the
9 representation work here at Stanford Hospital.” [Quintel Decl. ¶ 20 & Exh. H.] On the
10 same day, Mr. Pullman stated in an e-mail that “Jocelyn Olick, Rachel Deutch and Ella
11 Hereth out of the SEIU UHW San Francisco office are handling all representation matters
12 for SEIU Local 715.” [Quintel Decl. ¶ 20 & Exh. H.] Ms. Olick also purported to have
13 authority to accept changes to the CBA. [Quintel Decl. ¶ 21 & Exh. I.]
- 14 • On or around March 28, 2006, W. Daniel Boone of the law firm Weinberg Roger &
15 Rosenfeld, which historically represented Local 715, wrote a letter to Laurence R.
16 Arnold, an attorney who represents the Hospitals, which referred to “United Healthcare
17 Workers – West (formerly SEIU, Local 715).” [Arnold Decl. ¶ 26 & Exh. S.]
- 18 • In early April, 2006, UHW employee Phyllis Willett told Ms. Quintel that when the
19 Hospitals remitted union dues, they needed to provide the social security numbers of the
20 relevant employees to help UHW identify them. [Quintel Decl. ¶ 16.]
- 21 • Around April 17, 2006, Ms. Quintel received a letter from William A. Sokol of the
22 Weinberg Firm in which he stated “I am writing on behalf of SEIU United Healthcare
23 Workers West” and requested that the Hospitals provide information pertaining to
24 Bargaining Unit employees, and the dues deducted from their paychecks. [Quintel Decl.
25 ¶ 17 & Exh. E.]
- 26
27
28

- 1 • In May and June, 2006, Hospitals informed Local 715 that they did not consent to any
2 transfer of bargaining rights from Local 715 to UHW, and that the Hospitals would not
3 deal with employees of UHW. [Quintel Decl. ¶ 19 & Exh. G; Arnold Decl. ¶ 32 & Exh.
4 Z.]
- 5 • In June, 2006, Hospitals requested information from Local 715 regarding the
6 organization's status and the role of UHW. [Arnold Decl. ¶ 32 & Exh. Z.]
- 7 • On June 9, 2006 the Service Employees International Union ("SEIU" or the
8 "International") issued a document titled "Hearing Officers' Joint Report And
9 Recommendations" (the "Joint Report"). The Joint Report outlined a plan to reorganize
10 various SEIU Locals (the "SEIU Reorganization Plan"). The Joint Report noted, "Local
11 715 is the certified representative of employees at Stanford and Lucille (sic) Packard
12 Hospitals" but that "UHW is actually servicing employees in these facilities . . . pursuant
13 to servicing agreements." [Inciardi Decl. Exh. T p. 16.] The Joint Report concluded that,
14 in order to maximize local union strength, the jurisdiction of various local unions should
15 be changed. With respect to government employee unions, the report recommended the
16 creation of new local unions, that would absorb "a substantial portion" of the membership
17 of existing local unions, including Local 715. [Inciardi Decl. Exh. T p. 40.] The Joint
18 Report also recommended that, "the affiliation of private healthcare units represented by
19 Locals 727, 715, and 2028 should be changed to UHW as soon as feasible." [Inciardi
20 Decl. Exh. T p. 65.]
- 21 • On June 11, 2006, Andrew L. Stern, International President of SEIU, issued a
22 memorandum to "Affected SEIU Local Unions in California" announcing that SEIU had
23 decided to adopt the recommendations outlined in the Joint Report. The memorandum
24 confirmed that "Private Sector Hospital units currently represented by Locals 535, 707,
25 715, 2028, and 4988 will merge into UHW." [Quintel Decl. ¶ 23 & Exh. K at p. 4.]
- 26
27
28

- 1 • In mid-August, the Hospitals received copies of the Servicing Agreement in mid August
2 and reviewed it. [Quintel Decl. ¶ 24-25 & Exh. L; Arnold Decl. ¶ 36-38 & Exh. CC-EE.]
3 The Hospitals concluded, based upon the evidence that Local 715 had abdicated its
4 representative duties and assigned them to UHW, that the Servicing Agreement was
5 invalid and rejected it.
- 6 • Local 715 was informed of the Hospitals' rejection of the Servicing Agreement on or
7 around August 29, 2006, and was further informed that the Hospitals would not deal with
8 employees of UHW acting pursuant to the Servicing Agreement. [Arnold Decl. ¶ 38 &
9 Exh. EE.]
- 10 • In September, 2006, Bargaining Unit employees were asked to ratify the reorganization
11 plan adopted by SEIU by means of a state-wide vote. The balloting material distributed
12 to Bargaining Unit employees expressly stated that "Hospital workers at . . .
13 Stanford/Lucille Packard Children's Hospital . . . will change their affiliation to United
14 Healthcare Workers – West." [Quintel Decl. ¶ 26-27 & Exh. M-N.]
- 15 • On January 2, 2007, International President Stern issued an "Order Of Reorganization" to
16 various SEIU locals, including Local 715. [Inciardi Decl. Exh. U.] President Stern
17 ordered that all workers represented by Local 715, with certain exceptions, be
18 "reorganized into SEIU Local 521." President Stern further ordered that "all . . .
19 Stanford/Lucille (sic) Packard Hospital workers be, and are hereby, reorganized into
20 SEIU Local UHW." [Inciardi Decl. Exh. U.] Such "reorganization" was to take place as
21 soon as practicable.
- 22 • On January 31, 2007, Chief Shop Steward Robert W. Rutledge, stated in an e-mail that,
23 "SEIU 715 no longer exists and a service agreement between the former 715 and UHW
24 has been in place since March first of 2006." [Quintel Decl. ¶ 28 & Exh. O.] Copies of
25 the e-mail were sent to Ms. Olick and UHW employee Kim Tavaglione, neither of whom
26
27
28

1 objected to Mr. Rutledge's statement.

- 2 • At a meeting with Ms. Quintel on or around February 2, 2007, Mr. Rutledge repeated his
3 assertion that Local 715 no longer existed. He also stated that Local 715 no longer
4 represented employees at the Hospitals, and that they were now represented by UHW.
5 [Quintel Decl. ¶ 29.]
6
- 7 • In late January, Local 715 prominently posted a statement on its website, located at
8 <http://www.SEIU715.org>, that "We are in the process of transitioning to our new local
9 521. This web site will be taken down on Feb. 28. On March 1, our new Local's web
10 site www.seiu521.org will have your chapter pages and other information." [Quintel
11 Decl. ¶ 30 & Exh. P.]
12
- 13 • Beginning on or around March 1, visitors to Local 715's website could no longer access
14 the former site, but were automatically redirected to the website of Service Employees
15 International Union, Local 521 ("Local 521"), located at <http://www.SEIU521.org>. Local
16 521's website contained a prominent statement that five local unions, including Local
17 715 "have come together . . . by forming one larger, more powerful local." [Quintel
18 Decl. ¶ 32 & Exh. R.] Another page referenced benefits available to "former SEIU Local
19 715 members." [Quintel Decl. ¶ 32 & Exh. R.]
- 20 • On or around March 5, 2007, Local 715's website contained the following statement:
21 "Five locals (415, 535, 700, 715, and 817) have come together to cover the North Central
22 region by forming one larger, more powerful local. On January 2, 2007, our new local
23 received its charter. On March 1, 2007, the resources of all five locals were transferred to
24 Local 521." [Quintel Decl. ¶ 40 & Exh. X.]
- 25 • As of March 2, 2007, UHW's website, located at <http://SEIU-UHW.org>, contained an
26 assertion that UHW represented the Hospitals' employees. [Quintel Decl. ¶ 34 & Exh.
27 S.] UHW has continued to claim to represent the Hospitals' employees on its website.
28

1 [Inciardi Decl. ¶ 24 & 29-30 & Exh. C21-C22.]

- 2 • The dues deduction authorization forms, by which the individual bargaining unit
3 members authorized deduction and remittance of union dues, authorized remittance of
4 dues specifically to Local 715, and to no other organization. [Quintel Decl. ¶ 35 & Exh.
5 T.]
- 6
- 7 • In fact, although it was not known to the Hospitals at the time, the actual recipient of the
8 dues being remitted to “Local 715” was Local 521. A document posted on the Local 521
9 Website titled “Dues Receipts of the year of 2007” showed that, in September, 2007,
10 Local 521 received a payment of dues totaling \$21,949 from an account designated
11 “USW Hospitals” (“USW” being a commonly used acronym for “United Stanford
12 Workers,” the name given to the chapter of Local 715 that had been assigned to the
13 SHC/LPCH Bargaining Unit). [Arnold Decl. ¶ 57 & Exh. WW.] This was the exact
14 amount (rounded to the dollar) of the Hospitals’ last dues remittance to “Local 715” for
15 February, 2007, which was \$21,949.35. [Quintel Decl. ¶ 38 & Exh. V.]
- 16 • On March 2, 2007, the Hospitals informed “Local 715” that, after the remittance of the
17 dues for February, 2007, the Hospitals would no longer remit dues to “Local 715” absent
18 clarification of its status and the identity of the organization that would be receiving the
19 dues. [Quintel Decl. ¶ 36 & Exh. U.] The requested information was not provided, and
20 after March 1, 2007, the Hospitals ceased remitting dues. [Quintel Decl. ¶ 37.] The
21 Hospitals continued to deduct dues from Bargaining Unit employees’ checks, but held the
22 dues in a separate bank account established for that purpose, a procedure that continues to
23 date. [Quintel Decl. ¶ 37.]
- 24
- 25 • On June 8, 2007, President Stern issued an “Order Of Emergency Trusteeship.” [Inciardi
26 Decl. Exh. Z.] That order stated that, because of the Hospitals’ “position” that Local 715
27 had ceased to exist, and the transfer of the bulk of Local 715’s former members and
28

resources to Local 521, SEIU was placing “Local 715” under trusteeship, removing its officers, and appointing Bruce W. (“Rusty”) Smith as trustee. The order confirmed that the SEIU’s reorganization plan remained in place and that the remaining members of “Local 715” would be “united with other SEIU healthcare members in SEIU United Healthcare Workers – West.” [Inciardi Decl. Exh. Z.]

- Mr. Smith sent a letter to Ms. Quintel on June 14, 2007 informing her of the trusteeship, that the Servicing Agreement would “remain in full force and effect,” and that UHW employees would continue to “service” the Hospitals. [Quintel Decl. ¶ 48 & Exh. FF.]
- Around June 18, 2007, Mr. Arnold learned that Barbara J. Chisholm of the law firm Altshuler Berzon LLP (the “Altshuler Firm”) was now representing “Local 715.” Mr. Arnold confirmed this in a conversation with Ms. Chisholm followed by a confirming letter. [Arnold Decl. ¶ 40 & Exh. FF.]
- To date, the Hospitals have not received any notification that the Altshuler Firm no longer represents “Local 715.” [Quintel Decl. ¶ 57; Arnold Decl. ¶ 40.]
- Since the announcement of the Altshuler Firm’s representation of “Local 715,” the Hospitals continued to receive correspondence from Weinberg Firm attorneys purporting to act on “Local 715’s” behalf in grievance and arbitration matters. [Arnold Decl. ¶ 49, 55 & 65 & Exh. UU & EEE.] Weinberg Firm attorneys also appeared in each arbitration hearing that was held after the appointment of the Altshuler Firm as counsel. [Arnold Decl. ¶ 46 & 49 & Exh. LL.]
- Hospitals were aware that the Weinberg Firm has historically acted as counsel to UHW and it had previously sent correspondence to the Hospitals representing UHW pursuant to the Servicing Agreement.[Quintel Decl. ¶ 17 & Exh. E.] The Hospitals became concerned that when the Weinberg Firm acted on behalf of “Local 715,” it was actually retained by UHW and acting under authority of the rejected Servicing Agreement.

1 However, when the Hospitals requested information from “Local 715” on this issue
2 “Local 715” and its purported attorneys either failed to respond or openly refused to
3 respond. [Arnold Decl. ¶ 49-53 & Exh. NN-RR.] The Hospitals concluded that the
4 Weinberg Firm was, in fact, representing UHW, and that its appearances on “Local
5 715’s” behalf were made under authority of the rejected Servicing Agreement.
6 Therefore, the Hospitals refused to participate in arbitration proceedings with Weinberg
7 attorneys absent assurances that the appearance was made directly on behalf of “Local
8 715” and not pursuant to the Servicing Agreement. [Arnold Decl. ¶ 53 & Exh. RR.]
9 Neither the Weinberg Firm nor the Altshuler Firm provided the Hospitals with the
10 requested assurance.

11 It has been recognized that, under the National Labor Relations Act, one union may use
12 agents or experts from another union to act on its behalf in formal labor negotiations. *Goad*
13 *Company*, 333 NLRB 677, 679 (2001). However, a union may not use the purported
14 appointment of agents to effectuate a *de facto* change of the bargaining representative, and under
15 such circumstances, the employer is under no obligation to deal with the purported agents.
16 *Goad, supra*, 333 NLRB at 680 (employer not obligated to deal with purported agent where
17 certified union “did not simply enlist the aid of an agent . . . it transferred its representational
18 duties and responsibilities.”) See also *Sherwood Ford, Inc*, 188 NLRB 131, 133-134 (1971)
19 (Board disregarded agency agreement between unions as “a device, subterfuge, or stratagem”
20 designed to accomplish a *de facto* change of the bargaining agent.).

21 The undisputed facts set forth above demonstrate that, notwithstanding the content of the
22 Servicing Agreement, in practice, “Local 715” and UHW have used the Servicing Agreement as
23 a “device, subterfuge, or stratagem” to, in effect, transfer representative status to UHW. Rather
24 than serving as a mere agent, as called for in the Servicing Agreement, UHW has sought to
25 completely supplant Local 715 with respect to every aspect of collective bargaining, leaving
26 Local 715 as the representative in name only. Given this, the Hospitals are not obligated to
27 arbitrate or otherwise deal with employees and representatives of UHW, including Weinberg
28

1 Firm attorneys, acting pursuant to the invalid Servicing Agreement.

2
3 **IT IS ORDERED**, for the foregoing reasons, that the Hospitals' motion for summary
4 judgment or, in the alternative, summary adjudication of claims or defenses is **GRANTED** and
5 that judgment SHALL BE AND HEREBY IS entered against Local 715 and in favor of the
6 Hospitals. **IT IS FURTHER ORDERED** that Local 715's Petition is HEREBY DISMISSED
7 WITH PREJUDICE.

8 Dated:

9
10
11 By: _____
12 HON. JEREMY FOGEL
13 JUDGE OF THE UNITED STATES
14 DISTRICT COURT FOR THE NORTHERN
15 DISTRICT OF CALIFORNIA
16
17
18
19
20
21
22
23
24
25
26
27
28